

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 9 and 12 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-24 are now pending in this application.

In the April 24, 2007 Office Action, the Examiner rejected claims 4 and 12 under 35 U.S.C. §112, second paragraph for, in the Examiner's view, being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. With regard to claim 4, the Examiner asserted that the word "possible" renders the claim indefinite since "the term 'possible' is a language that suggests or makes optional." Applicant strenuously disagrees with this rejection on a number of grounds. First, there is absolutely no rule that a claim is indefinite if claim language "suggests or makes possible." In fact, the Section 2111.04 of the Manual of Patent Examining Procedure clearly infers that such language is permitted. Rather than stating that such language is impermissible, this section only refers to the patentable weight of the terminology at issue. Furthermore, a cursory search of the term "possible" in the U.S. Patent and Trademark Office patent database (patft.uspto.gov/netahtml/PTO/search-adv.htm) reveals that over thirty-six thousand patents have issued since 1975 with the term "possible" included within at least one claim. With literally tens of thousands of patents having issued with this term in the claims, it simply makes no sense for the Examiner to assert that the mere mention of this term renders claim 4 indefinite.

In addition, and separate from the MPEP and the Patent Office records, Applicant also submits that there is no issue of indefiniteness in this claim. In particular, claim 4 describes

two mutually exclusive situations, one where point-to-multipoint repair is possible, and one where it is not possible. Claim 4 provides for method processes in the event that either of these situations occurs. With both situations explicitly identified, and processes described in the event that either situation occurs, the metes and bounds of the claim are clearly identified.

For all of the above reasons, the Examiner's rejection of claim 4 cannot stand.

In the case of claim 12, one skilled in the art would have no difficulty whatsoever understand the metes and bounds of this claim, even with the word "can" included therein. More particularly, one skilled in the art would clearly understand that the use of this term indicates the capability of the sender. Claim 12 describes that the sender is capable of (1) determining the number of receivers on the point-to-multipoint session and (2) computing a randomization mechanism according to the language of the claim. Applicant is at a loss as how this language would not be understood by one skilled in the art. Nevertheless, and solely to advance the prosecution of the present application, Applicant has amended claim 12 as describing the sender as being *capable* of performing these processes. In making this amendment, Applicant is not intending to surrender any claim scope.

The Examiner rejected claims 15-17 and 22 under 35 U.S.C. §101 as, in the Examiner's view, being directed to non-statutory subject matter. First, the Examiner stated that language "configured" suggests or makes optional. Once again, Applicant fully disagrees with this position. This language simply does not suggest that anything is optional. Instead, this language simply describes that the computer code at issue in every limitation is arranged/organized so as to perform a specific process. There is nothing optional about the processes; if the processes cannot be performed by the code at issue, the limitation simply is not met.

The Examiner also asserted that a structural and functional interrelationship between a computer program and other elements of a computer is required. This position is incorrect and in clear contradiction of the MPEP. Section 2106.01 of the MPEP unequivocally states that "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in

most cases since the use of technology permits the function of the descriptive material to be realized.” This same section also explicitly identifies computer programs as constituting functional descriptive material. In other words, the MPEP is clear that, so long as technology can be used to implement the computer program stored on the computer-readable medium, the claim meets the statutory requirements.

In light of the above, the Examiner’s rejection of claims 15-17 and 22 must be withdrawn.

Lastly, the Examiner has once again rejected claims 1, 9, 15 and 18 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,577,599 (Gupta), with the Examiner asserting that all of the features of these claims are taught by Gupta. Once again, Applicant fully disagrees with this position.

Simply stated, Gupta cannot be interpreted as teaching all requested expected-but-not-received data being retransmitted via a point-to-multipoint session. First, the Examiner is reminded that he is obligated that a prior art reference must be reviewed as a whole when making determinations under 35 U.S.C. §§102 or 103. With this obligation in mind, the Examiner is directed to Figure 5 and column 12, lines 30-50 of Gupta, where it is clearly and unequivocally described how the system of Gupta makes an independent determination of whether each packet of data should be retransmitted according point-to-point (unicast) or point-to-multipoint (multicast) protocols. Because of this determination, some expected-but-not received data is sent via a point-to-point mechanism, not a point-to-multipoint session. To this end, column 12, lines 32-40 is particularly illuminating:

At step 510, it is determined whether many receivers have reported an information packet missing. If so, then that packet is multicasted to the receivers participating in the multicast session, at step 530. The receivers that have already received the packet will simply ignore the newly retransmitted information. If a few receivers have failed to acknowledge the receipt of the information packet, however, the sender individually transmits (unicasts) that packet to each of those few receivers, at step 520. (emphasis added)

Going into even greater detail, column 12, lines 41-46 states:

For example, if a data packet has been multicasted to 100 receivers and the receipt of it has been acknowledge by 4 receivers, then the packet is multicasted to all 100 receivers. On the other hand, if only 4 out of 100 receivers have failed to received the packet, then that packet is sent to those 4 receivers, using a unicast transmission to each one. (emphasis added)

In other words, both of these sections clearly show that some data, i.e., data of which only a few receivers are missing the packet, is sent via a point-to-point mechanism, which is clearly not the same as a point-to-multipoint mechanism. This is in clear contradiction to the language of claims 1, 9, 15 and 18, which states that all of the requested expected-but-not received data is retransmitted via a point-to-multipoint session.

In rejecting the claims at issue, the Examiner has relied upon column 6, lines 14-23 and the Abstract to support his position. However, neither of these sections provide such support. In both cases, these sections do nothing more than discuss, in only the most general of terms, how lost packets are retransmitted to intended receivers. Neither session mentions the use of either point-to-multipoint/multicast sessions or point-to-point/unicast sessions. With point-to-multipoint sessions not even discussed in these sections, it is not possible for the Examiner to assert that either section teaches that *all* data is retransmitted through the use of point-to-multipoint sessions.

Continuing, the Examiner has also relied upon column 9, lines 28-39 and Figure 3 to support his view that Gupta et al. teaches that all data is retransmitted via point-to-multipoint sessions. However, this is not correct, particularly in view of all of the teachings of Gupta et al. In particular, although column 9, lines 29-32 discusses the use of multicast sessions, none of the cited text specifically teaches the *exclusive use* of such sessions. Instead, this section only discusses the manner and timing in which multicast data is retransmitted, *if* the data is to be multicast. However, and as is made abundantly clear in column 12, lines 32-46, it is not the case that all of the data is retransmitted using a multicast or point-to-multipoint session. Given that the Examiner is obligated to consider Gupta et al. as a whole, this later text clearly demonstrates that column 9, lines 29-38 is being read out of context by the Examiner, since the rest of the reference shows that the data is intended to be retransmitted by both multicast and unicast sessions.

In responding to Applicant's prior arguments regarding the differences between the claims at issue and Gupta et al., the Examiner asserted that "Applicant's invention is basically similar to (sic) Gupta et al. method of retransmitting data." This statement is improper as a matter of law. 35 U.S.C. §102 does not permit the rejection of a claim if it is "basically the same" as what is described in a prior art reference. Unless *all* of the limitations of the various claims can be found in Gupta et al., rejections under 35 U.S.C. §102 are wholly improper. Regarding the rest of the Examiner's response to Applicant's prior arguments, these comments are simply not relevant to the issue at hand. Applicant is not disputing that Gupta et al. teaches the use of multicast sessions. However, and as discussed at length above, Gupta et al. does not teach using point-to-multipoint sessions to retransmit all of the requested expected-but-not-received data, and the Examiner's response to Applicant's arguments has not contested this point. Therefore, unless the Examiner can point with particularity where Gupta et al. teaches the retransmission of all of the data at issue via a point-to-multipoint session, the Examiner's rejections based upon Gupta et al. cannot stand.

Finally, in rejecting claim 15 in particular, the Examiner also relied upon column 13, lines 11-12 and claim 5 for support of his position. However, this section does not cure the deficiencies discussed above, namely having all of the relevant data being retransmitted via a point-to-multipoint session.

For all of the above reasons, Applicant submits that claims 1, 9, 15 and 18 are allowable over Gupta et al., and the Examiner's rejection of these claims must be withdrawn.

Lastly, Applicant has amended claim 9 to correct a typographical error, namely adding the term "the plurality of receivers" after the last reference of "to." In making this amendment, Applicant is intending to narrow the scope of the claim, and Applicant submits that this amendment has no bearing on the issues discussed above.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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